

***United States Court of Appeals
for the
District of Columbia Circuit***



**TRANSCRIPT OF
RECORD**

**BRIEF AND APPENDIX FOR
APPELLANT**

IN THE
United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA.

*United States Court of Appeals
For the
District of Columbia Circuit*

No. 11,093 FILED SEP 18 1951

JAMES T. HOBBS, Appellant,

Joseph W. Stewart

CLERK

v.

BEULAH E. HOBBS, Appellee.

554

**Appeal from the United States District Court
for the District of Columbia.**

RAYMOND GODBERSEN
Suite 420, Kass Building
711 Fourteenth Street, N.W.
Washington, D. C.
Attorney for Appellant.

STATEMENT OF QUESTIONS PRESENTED.

The following questions are raised by this Appeal:

(1) Is the Defendant in a Nevada divorce proceeding, who participated in those proceedings by entering her Appearance, waiving all time to demur, answer, or otherwise plead, and consenting to the entry of her default, precluded by the full faith and credit clause of the Constitution from collaterally attacking the Nevada divorce decree in a subsequent proceeding in the Courts of a sister state?

(2) Was the finding of the Trial Court, that the Appearance and Waiver signed by Appellee Beulah E. Hobbs and filed in the Nevada divorce proceedings was not the voluntary act of Appellee Beulah E. Hobbs, supported by substantial evidence where it appeared that Appellee had the proposed Appearance and Waiver in her custody and possession for a period of several days during which time she secured the advice and assistance of her son, had benefit of legal counsel of her own choice, and had drafted for her, at her instance and request, a property settlement and separation agreement which she offered to Appellant as a condition to the Appearance and Waiver and which became a binding contract between the parties?

(3) Was the finding of the Trial Court, that Appellant James T. Hobbs practiced fraud on the Nevada Court, supported by substantial evidence where it appeared that Appellant James T. Hobbs had established a residence in Nevada with a business purpose and with the intention of making his permanent home in Nevada?

(4) Did the Trial Court have jurisdiction to entertain an action for maintenance under Section 415 of Title 16 of the District of Columbia Code where the parties were divorced at the time the action was instituted?

TABLE OF CONTENTS.

	Page
JURISDICTION OF THE COURT	1
STATEMENT OF THE CASE	2
RELEVANT STATUTES	3
STATEMENT OF POINTS	4
SUMMARY OF THE ARGUMENT	4
ARGUMENT	5
I. AN ACTION FOR MAINTENANCE UNDER SECTION 415 OF TITLE 16 OF THE DISTRICT OF COLUMBIA CODE CANNOT BE MAINTAINED UNLESS THE PAR- TIES ARE HUSBAND AND WIFE	5
II. A NEVADA DIVORCE DECREE OBTAINED PREVIOUS TO THE INSTITUTING OF AN ACTION FOR MAINTEN- ANCE UNDER SECTION 415 OF TITLE 16 OF THE DISTRICT OF COLUMBIA CODE IS A GOOD DEFENSE TO SUCH AN ACTION	6
III. THE TRIAL COURT IS BOUND TO GIVE FULL FAITH AND CREDIT TO THE JUDGEMENT OF THE NEVADA COURT	6
IV. A DEFENDANT IN A JUDICIAL PROCEEDING IN ONE STATE IS PRECLUDED FROM COLLATERALLY AT- TACKING THAT PROCEEDING IN A SUBSEQUENT PRO- CEEDING IN THE COURTS OF A SISTER STATE IF SHE PARTICIPATED IN THE FIRST PROCEEDING BY ENTERING AN APPEARANCE AND WAIVER	7
V. A FINDING BY THE TRIAL COURT THAT THE APPEAR- ANCE AND WAIVER SIGNED BY THE APPELLEE AND FILED IN THE NEVADA PROCEEDING WAS NOT THE VOLUNTARY ACT OF APPELLEE IS NOT SUPPORTED BY SUBSTANTIAL EVIDENCE WHERE THE EVIDENCE CLEARLY SHOWED THAT APPELLEE BEFORE SIGN- ING THE APPEARANCE AND WAIVER HAD AMPLE OPPORTUNITY TO SECURE AND DID SECURE BENE- FIT OF LEGAL COUNSEL OF HER OWN CHOICE AND INITIATED THE TERMS BY WHICH THE PARTIES	

	Page
AGREED TO SETTLE THEIR PROPERTY RIGHTS AND LIVE SEPARATE LIVES WHICH AGREEMENT WAS A CONDITION TO THE APPEARANCE AND WAIVER	9
VI. A FINDING BY THE TRIAL COURT THAT APPEL- LANT HAD PERPETRATED A FRAUD UPON THE NEVADA COURT IS NOT SUPPORTED BY SUBSTAN- TIAL EVIDENCE WHERE THE EVIDENCE SHOWED THAT APPELLANT HAD ESTABLISHED A NEVADA RESIDENCE FOR A BUSINESS PURPOSE WITH THE INTENTION OF MAKING HIS PERMANENT HOME THERE AND IN THE ABSENCE OF ANY SHOWING THAT HIS NEVADA RESIDENCE WAS NOT BONA FIDE	16
VII. CONCLUSION AND REQUEST FOR RELIEF	20

CITATIONS.

CASES:

<i>Coe v. Coe</i> , 334 U. S. 378 (1948)	7, 8
<i>Davis v. Davis</i> , 305 U. S. 32 (1938)	8
<i>Sherrer v. Sherrer</i> , 334 U. S. 343 (1948)	7, 8
<i>Williams v. North Carolina</i> , 317 U. S. 287 (1942) ..	6, 8, 16
<i>Williams v. North Carolina</i> , 325 U. S. 226 (1945) ..	6

STATUTES:

District of Columbia Code (1940 Edition), Title 11, Section 301	1, 3
District of Columbia Code (1940 Edition), Title 16, Section 415	1, 3, 4, 5, 6
United States Code, Title 28, Section 1291	1, 4
United States Constitution, Article IV., Section 1 ...	3, 6

IN THE

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 11,093

JAMES T. HOBBS, *Appellant*,

v.

BEULAH E. HOBBS, *Appellee*.

BRIEF FOR APPELLANT.

JURISDICTION OF THE COURT.

This is an Appeal from the Judgment of the District Court of the United States for the District of Columbia, entered on the 25th day of May, 1951, ordering the Defendant, James T. Hobbs, to make maintenance payments to his former wife, Beulah E. Hobbs, under Section 301 of Title 11 and Section 415 of Title 16 of the Code of Laws for the District of Columbia for 1940. This appeal was taken on the 12th day of June, 1951, under the provision of Section 1291 of Title 28 of the Code of Laws for the United States.

STATEMENT OF THE CASE.

Appellant and Appellee were lawfully married December 18, 1912, in Danville, Virginia, and subsequently lived together as man and wife in the District of Columbia, until on or about October 16, 1949, at which time they entered into a separation agreement and property settlement (Exhibit #2, Appendix 10, 11, 12) Appellant then established his residence in Nevada and on December 5, 1949, was awarded a decree of absolute divorce from the Appellee by the Second Judicial District Court of the State of Nevada. (Exhibit #1, Appendix 8, 9, 10) The separation agreement and property settlement which had been entered into by the parties was incorporated into the Nevada divorce decree, and in accordance therewith, the Nevada Court ordered Appellant to pay Appellee as maintenance the sum of Eighty Dollars (\$80.00) per month. In addition to the separation agreement and property settlement, Appellee further participated in the Nevada proceedings by entering her Appearance, waiving all time to demur, answer, or otherwise plead, and consenting to the entry of her default. (Exhibit #3, Appendix 12, 13) This Appearance and Waiver became a part of the pleadings and record in the Nevada proceedings. On December 12, 1949, Appellant remarried. In spite of the fact that the Nevada Court had ordered Appellant to make maintenance payments to the Appellee, and in spite of the fact that the parties were divorced, Appellee instituted in the District Court for the District of Columbia on February 6, 1950, an action for maintenance and support alleging that she was still the lawful wife of Appellant, and that the Nevada divorce decree was of no validity because the Appearance and Waiver filed in the Nevada proceedings was not the voluntary act of the Appellee, and that, consequently, Appellant in applying to the Nevada Court for the dissolution of the marriage had perpetrated a fraud upon Appellee and the Nevada Court. (Appendix 2, 3, 4) Appellant moved to dismiss the Complaint on the grounds that the parties were not man and wife and further that

the matter was res adjudicata by virtue of the Nevada proceedings to which the District of Columbia Court must give full faith and credit. (Appendix 4, 5, 6) The Motion was denied (Appendix 6) and upon the Trial of the case, the District of Columbia Court concluded that the Nevada divorce decree was null and void, and that, therefore, the District of Columbia Court had jurisdiction to enter a maintenance order. (Appendix 13, 14, 15) The District of Columbia Court then ordered Appellant to pay Appellee the same amount (\$80.00 per month) which the Nevada Court had previously ordered. (Appendix 16) On June 12, 1951, Appellant timely filed a Notice of Appeal (Appendix 17) for judicial review by this Honorable Court in support of which he now submits this Brief.

RELEVANT STATUTES.

1. The Constitution of the United States, Article IV, Section 1.

"Full faith and credit shall be given in each state to the public Acts, Records, and judicial Proceedings of every other State." * * *

2. The District of Columbia Code (1940 Edition), Title 11, Section 301.

"The District Court of the United States for the District of Columbia shall have general jurisdiction in law and equity," * * *

3. The District of Columbia Code (1940 Edition), Title 16, Section 415.

"Maintenance of wife and minor children—Enforcement. Whenever any husband shall fail or refuse to maintain his wife and minor children, if any, although able so to do, the court, on application of the wife, may decree that he shall pay her, periodically, such sums as would be allowed to her as permanent alimony in case of divorce for the maintenance of herself and the minor children committed to her care by

the court, and the payment thereof may be enforced in the same manner as directed in regard to such permanent alimony. (Mar. 3, 1901, 31 Stat. 1346, ch. 854, §980.)”

4. The United States Code, Title 28, Section 1291.

STATEMENT OF POINTS.

1. The Trial Court erred in denying full faith and credit to the Nevada divorce decree in light of the evidence that Appellee had participated in the proceedings before the Nevada Court by entering her Appearance, waiving all time to demur, answer, or otherwise plead, and consenting to the entry of her default.

2. The Trial Court erred in finding that the Appearance and Waived signed by the Appellee was not the voluntary act of the Appellee.

3. The Trial Court erred in finding that Appellant had practiced fraud on the Nevada Court in light of the evidence that Appellant had established a Nevada residence with a business purpose with the intention of making Nevada his permanent home and in the absence of any evidence that Appellant's Nevada residence was not bona fide.

4. The Trial Court did not have jurisdiction to enter an action for maintenance under Section 415 of Title 16 of the District of Columbia Code where the parties were divorced at the time the action was instituted.

SUMMARY OF THE ARGUMENT.

1. An action for maintenance under Section 415 of Title 16 of the District of Columbia Code cannot be maintained unless the parties are husband and wife.

2. A Nevada divorce decree obtained previous to the instituting of an action for maintenance under Section 415 of Title 16 of the District of Columbia Code is a good defense to such an action.

3. The Trial Court is bound to give full faith and credit to the Judgment of the Nevada Court.

4. A Defendant in a judicial proceeding in one state is precluded from collaterally attacking that proceeding in a subsequent proceeding in the courts of a sister state if she participated in the first proceeding by entering her Appearance and Waiver.

5. A finding by the Trial Court that the Appearance and Waiver signed by the Appellee and filed in the Nevada proceeding was not the voluntary act of Appellee is not supported by substantial evidence where the evidence clearly showed that Appellee before signing the Appearance and Waiver had ample opportunity to secure and did secure benefit of legal counsel of her own choice and initiated the terms by which the parties agreed to settle their property rights and live separate lives which agreement was a condition to the Appearance and Waiver.

6. A finding by the Trial Court that Appellant had perpetrated a fraud upon the Nevada Court is not supported by substantial evidence where the evidence showed that Appellant had established a Nevada residence for a business purpose with the intention of making his permanent home there and in the absence of any showing that his Nevada residence was not bona fide.

ARGUMENT.

I. An Action for Maintenance Under Section 415 of Title 16 of the District of Columbia Code Cannot Be Maintained Unless the Parties Are Husband and Wife.

The statute involved here gives the wife a remedy against her husband should he fail or refuse to maintain her. However, the statute applies specifically to a wife, and, of course, to minor children, if any, and further provides that to enforce this remedy the *wife* may apply to the Court for a decree compelling the husband to pay her periodic

payments. Therefore, it follows that in order to invoke this remedy, the party Plaintiff must be the *wife* of the party Defendant at the time the application is made. In the instant case, the parties were divorced at the time application was made, and, therefore, the Trial Court did not have jurisdiction to entertain the action.

II. A Nevada Divorce Decree Obtained Previous to the Instituting of an Action for Maintenance Under Section 415 of Title 16 of the District of Columbia Code Is a Good Defense to Such an Action.

In consideration of the interpretation of Section 415 of Title 16 above, it follows that the Complaint should have been dismissed upon the introduction by the Appellant of a divorce decree. (Exhibit #1, Appendix 8, 9, 10) Inasmuch as such a decree of divorce was offered and admitted in evidence without objection, it follows that the Complaint should have been dismissed.

III. The Trial Court Is Bound to Give Full Faith and Credit to the Judgment of the Nevada Court.

The Constitution of the United States provides that full faith and credit be given in each state to the public acts, records, and judicial proceedings of every other state. Clearly, the Nevada divorce proceedings were "judicial proceedings", within the meaning of the Constitution. It follows, therefore, that the District of Columbia Court was bound to give full faith and credit to the Nevada divorce decree unless under the doctrine of the first *Williams Case*, 317 U. S. 287, (1942), it can be shown that the Nevada Court was without jurisdiction to entertain the divorce proceedings. Both the first and second *Williams Case*, 317 U. S. 287, (1942); 325 U. S. 226, (1945), establish the doctrine that the full faith and credit clause of the Constitution was not intended to give such sanctity to the judicial proceedings of a state as would enable that state to render Judg-

ments in cases where it had no jurisdiction and yet be free from collateral attack by the Courts of a sister state. As is shown in subsequent argument, this doctrine has been modified to the extent that if the Defendant in the original proceeding participated therein, then that Defendant is then precluded from collaterally attacking those judicial proceedings in any subsequent proceeding in the Courts of a sister state. For the purpose of this particular point, however, suffice it to say that the Nevada divorce decree is entitled to full faith and credit if it is not successfully attacked on jurisdictional grounds or is not susceptible to such collateral attack.

IV. A Defendant in a Judicial Proceeding in One State Is Precluded From Collaterally Attacking That Proceeding in a Subsequent Proceeding in the Courts of a Sister State if She Participated in the First Proceeding by Entering an Appearance and Waiver.

Substantially the same jurisdictional problem was involved in the case of *Sherrer v. Sherrer*, 334 U. S. 343, (1948), which the Supreme Court decided on June 7, 1948. In that case the wife went to Florida and sued for divorce and obtained a decree. The decree was subsequently challenged in the Courts of Massachusetts. The Supreme Court held that the decree was entitled to full faith and credit for the reason that the Defendant had participated by entering an Appearance and otherwise pleading. The Court concluded its opinion with the following observation:

“That vital interests are involved in divorce litigation indicates to us that it is a matter of greater, rather than lesser importance, that there should be a place to end such litigation.”

Substantially the same reasoning was applied by the Supreme Court in the case of *Coe v. Coe*, 334 U. S. 378, (1948), also decided on June 7, 1948. In both the *Sherrer Case* and the *Coe Case* the Supreme Court held that the Defend-

ants in the original proceedings were precluded in subsequent proceedings from challenging the jurisdiction of the state court which rendered the decree and thus applied more liberally the doctrine established earlier in the case of *Davis v. Davis*, 305 U. S. 32, (1938). The only difference between the *Davis Case* and the later *Sherrer Case* and *Coe Case*, is that the extent of the "participation" was less in the *Sherrer Case* and in the *Coe Case* than it was in the *Davis Case*. In the instant case there is no question but that Appellee did participate in the Nevada divorce proceeding by entering her Appearance, waiving all time to demur, answer, or otherwise plead, and consenting to the entry of her default. The Supreme Court apparently has not been faced with the direct question of whether this is sufficient participation to bring the case within the doctrine of the *Davis*, *Sherrer*, and *Coe Cases*. It stands to reason, however, that this case should come within the purview of that doctrine because the Appellee, by waiving her opportunity to challenge the jurisdiction of the Nevada Court should thereafter be precluded from attacking the judicial proceedings in which she participated. It should be noted, parenthetically, that in the cases where the Supreme Court has held such foreign divorce decrees to be invalid on jurisdictional grounds, process was had by substituted service as in the *Williams Case*. In the instant case, Appellee entered her Appearance in the Nevada proceeding after having had the benefit of legal counsel of her own choice.

V. A Finding by the Trial Court That the Appearance and Waiver Signed by the Appellee and Filed in the Nevada Proceeding Was Not the Voluntary Act of Appellee Is Not Supported by Substantial Evidence Where the Evidence Clearly Showed That Appellee Before Signing the Appearance and Waiver Had Ample Opportunity to Secure and Did Secure Benefit of Legal Counsel of Her Own Choice and Initiated the Terms by Which the Parties Agreed to Settle Their Property Rights and Live Separate Lives Which Agreement Was a Condition to the Appearance and Waiver.

The testimony of the Appellee as it pertains to whether or not she voluntarily entered an Appearance and waived her opportunity to challenge the jurisdiction of the Nevada Court reads as follows:

By Mr. Godbersen:

Q. At any rate, you signed the first paper before a notary public; is that right? A. That is right.

Q. What happened to the paper immediately after you signed it? A. Immediately after I signed it, my husband went ahead and got dressed and went out. It was on Sunday. He was home all day.

Q. Did your husband have the paper? A. Yes, he had the paper.

Q. You gave it to your husband immediately? A. I signed the paper, and it was passed over to this notary public, and I didn't see it any more.

Q. What did the notary public do with it, if you know? A. He signed it and give it to my husband.

Q. Did you ever see that paper again, Mrs. Hobbs? A. Yes, I did.

Q. When? A. When I got it that night.

Q. Where did you get it that night? A. I got it out of the suitcase.

Q. After you got the paper out of the suitcase, how long did you have it? A. I had it from—I would say I got it out of the suitcase about seven o'clock on Sunday night. I had it until around three o'clock the next morning, when my son came over, and I gave it to him.

Q. From seven o'clock at night to three the next morning, did you talk to anyone about the paper? A. I did not.

Q. At three o'clock the next morning, when you gave it to your son, did you talk to your son about what the paper was and what it would do? A. Not until we got to his place. He put the paper in his pocket. We went home. I didn't have any sleep, so we laid down and took a little nap. We got up and read the paper and talked about it. While we was doing that, my husband called up. He talked to my son. I don't know what was said then.

Then he asked for me on the phone. He told us if we would fix up this paper, he first said he would give me \$15 a week.

I said, "I don't see how in the world I could live on that. Could you live on that?"

Then he said he would give me \$20.00.

Q. What did you say? A. I said, "All right."

Q. When you and your son read the paper at your son's house—A. That's right.

Q. (Continuing)—did he explain to you what was happening? A. Yes. He told me he thought I had gone and signed everything away, but I never did know everything until we took this paper down to this man.

Q. You said to your husband, over the telephone, that you would agree to \$80? A. I would agree to that. I would rather have that than nothing.

Q. But you did agree to that? A. I did, yes.

Q. Did you and your son then take the paper to anyone else? A. No, nobody except a lawyer, who wrote the paper and fixed the paper up.

Q. So you and your son took the first paper you signed to a lawyer, to have the second paper drawn up; is that right? A. That's right.

Q. Then the second paper was drawn up? A. Yes.

Q. What did you do with the second paper? A. Brought it—we brought them both home and give them to my husband—had two copies made, so he would know it was alike.

My son brought me home, and naturally we wanted somebody to sign that paper, so my husband went next door himself and got this man to come and witness the paper.

Q. Did you understand then, after you gave your husband both papers, that you were not contesting this divorce, and he was to support you for the rest of your life at \$80 a month? A. No, I still didn't understand any of it.

Q. You still didn't understand that, but you did talk it over with your son and a lawyer. A. Yes, sir. (R. 3, 22, 23, 24, 25)

The testimony of Appellee as cited above clearly indicates that she had knowingly and voluntarily made a bargain with her husband for maintenance and support and to live separate lives. Appellee had counsel of her own choice as well as having the advice and help of her son. She cannot now be heard to say that she was forced to involuntarily enter an Appearance and waive her opportunity to challenge the jurisdiction of the Nevada Court.

This testimony was corroborated by Appellee's son who testified as follows:

By Mr. Hospidor:

A. I took her over to my house, and that morning—the same morning—I guess it was around seven o'clock—my father called me and said that he wanted this paper that had been signed—this waiver, they call it. He said he wanted it.

I told him that I didn't think it was right, after so many years of marriage, for him to turn my mother out without any support whatsoever.

He said he would agree that he would give her what he could afford. That was pretty loose, to my way of seeing. I asked him if he would sign an agreement in writing to that.

He said, "No," at first. Then he called back—so that ended the conversation—he called back about an hour later, and then he wanted to talk it over. He got a little bit nasty with me then, but even went so far as to tell me that he was an old man and that he didn't have too long around here, and that if he didn't have this waiver in his own way, he would just as soon wind it all up and maybe take me with him. So I think that is the way that conversation ended.

Then, about ten o'clock, I think, he called back again, and he said then that he would agree to support my mother and that he would put it in writing.

So I told him all right; I would go ahead and get an agreement drawn up.

Then there was a question of how much support he was going to give her. So he talked back and forth over that and finally agreed on \$80 a month in the agreement.

I took my mother and went down to this lawyer and had an agreement drawn up. I took it over a couple of nights later. I gave him both copies for him to read, to see both copies were the same, and he signed it.

He said if he could have this waiver to get his divorce, he would support my mother for the rest of her natural life with this \$80 a month. He said—He read it over, and he said it was agreeable to him; that he would do that, and he would live up to it.

I gave him his waiver that he had. He signed this agreement. He had a witness next door. He went next door and got Mr. Myers to witness.

He lived up to it as long as he was in Reno. As soon as he came back and his divorce was through, he got married, and then that was the end of the payments as far as support.

Mr. Hospidor: That is all.

* * * * *

By Mr. Godbersen:

Q. Mr. Hobbs, what was the name of this lawyer who drew this second paper? A. Mr. Paul Mudd.

Q. T. Paul Mudd? A. That is right; Southeast.

Q. Fairlawn Avenue? A. Minnesota Avenue.

Q. Mr. Hobbs, when you all got together after getting the paper drawn up, you explained to the lawyer what was happening, didn't you? A. To Mr. Mudd?

Q. Mr. Mudd. A. That is right.

Q. Mrs. Hobbs, your mother was with you? A. Yes.
(R. 27, 30, 31, 32, 33)

In addition to the above testimony the Notary Public who notarized the Appearance and Waiver document testified as follows:

Q. On the occasion of your notarization of her signature, did you have occasion to read the document which she was about to sign? A. Yes, I took the occasion to read the document.

Q. Can you recollect generally what it was about? A. Well, no, not at this time. I wouldn't know what it was at this time. All I do is just read the facts and notarize them; that is all.

Q. But you did have occasion at that time to read it? A. Oh, yes. I particularly took the time to read the document to her.

Q. After you read it, and before she signed it, did you have occasion to make any comments to her about whether she understood what she was doing? A. Yes. I particularly—On that occasion I particularly called her attention to that—that she was signing that of her own free will. I asked her if she understood what I read to her.

Q. Did she say whether she understood it? A. I believe she said that she did.

Q. Then, of course, she signed in your presence? A. That is right. (R. 63, 64, 65)

The Appellant testified as follows: (Appendix pages 26, 27, 28)

Q. Will you describe to the Court, briefly, the circumstances as you know them surrounding the time that she signed that document? A. You mean on that particular day?

Q. Yes, on that particular day. A. Well, she said she would sign the paper. She had read the paper over several times. I had read it over to her several times and explained it to her. She finally said she would sign it.

Q. How did you explain it to her? A. I explained the meaning of it to her that she was signing a paper that you submit yourself to the Nevada court as not being opposed to a divorce.

Q. When you explained that to her, did she object to signing it? A. Not at that time, she didn't. She previously had objected, but she said she would sign it.

Q. The objections you spoke of were previous to signing the agreement? A. That is right.

Q. After that agreement was signed, what happened to it? A. I put it in a suitcase in my bedroom. I went out downtown. When I came back, I was very tired. I laid down across the bed and went to sleep. I woke up around two o'clock in the morning. The paper was gone.

Q. What was the next thing you heard about the paper? A. I went in her bedroom and asked her where it was. She just said she didn't know anything about it.

I says, "Well, did you go out anywhere yesterday afternoon or fore part of the night?"

She said, "No."

I said, "The paper was in my suitcase, and it is gone." I said, "Was there anybody here?"

She said, "David was here."

I says, "Well, did he take the paper?"

She said, "Yes, he took the paper."

Then I went to the phone and called David. He first said he didn't have it; then he said he did have it.

I says, "Well, I want it. It is a legal document. It was signed and notarized. I want the paper."

He said, "Well, I will bring it over."

Q. Do you remember the name of the notary public who signed it? A. I don't remember his name; it starts with "B."

Q. Go ahead with your testimony. A. I only selected it out of the telephone book because it was close by. I didn't know the man.

He finally said he had the paper and would bring it over to me.

Well, he came over. When he came over, he came over and told his mother to put her coat on; he was going to take her over to his house.

I said, "Where's the paper?"

He says, "I'll give you the paper tomorrow."

The next day I got up about seven o'clock. I called in for a day's leave that day. I didn't feel like going to work. I didn't get much sleep.

So about eleven o'clock, to the best of my remembrance—about ten or eleven o'clock—the phone rang. It was David. He wanted to know, then, what I was willing to give his mother as to the support.

* * * * *

I told him that I told her that I would give her all that I was able to give her, and he wanted something in writing.

I says, "Well, I will agree to \$60.00."

So he said he wouldn't turn the paper loose without I signed a paper for \$80.

I said, "All right. I will sign it. Unless my health improves, I won't be here to pay it no way."

Q. So at the time she first signed the first paper, do I understand you had an agreement whereby you would support her for the rest of her life, to the best of your ability, but no amount was set? A. That is right.

Q. Then you came to an agreement at \$80? A. I had to do that to get the paper back.

Q. You did get the paper back? A. Yes.

Q. One or two? A. I got one—well, I got a copy of the paper I signed.

Q. Both papers? A. That is right. (R. 44, 45, 46, 47, 48)

The above testimony indicates clearly that not only did the Appellee have ample opportunity to draw a voluntary conclusion as to whether or not she would waive her right to challenge the jurisdiction of the Nevada Court, but she actually was the party to initiate the proposal for a separation agreement and a property settlement which was signed by the parties and became a condition to the Appearance and Waiver. In addition to this, Appellee had benefit of counsel of her own choice and, thereby, not only had an opportunity to gain an understanding of the Appearance and Waiver, but also the opportunity to challenge the jurisdiction of the Nevada Court.

VI. A Finding by the Trial Court That Appellant Had Perpetrated a Fraud Upon the Nevada Court Is Not Supported by Substantial Evidence Where the Evidence Showed That Appellant Had Established a Nevada Residence for a Business Purpose With the Intention of Making His Permanent Home There and in the Absence of Any Showing That His Nevada Residence Was Not Bona Fide.

The Trial Court concluded as a matter of law that Appellant had perpetrated a fraud on the Second Judicial District Court of the State of Nevada. Reading this conclusion of law in conjunction with the findings of fact and the transcript of proceedings, leaves one in a quandary as to what acts of the Appellant have been labeled by the Trial Court as fraudulent. However, there are allegations in the Complaint (Appendix pages 3, 4) to the effect that Appellant's Nevada residence was simulated, the inference being that the Nevada Court did not have jurisdiction because Appellant's residence was not bona fide. Since this is oftentimes a reason advanced for challenging a foreign divorce decree, Appellant now finds it advisable to advance the proposition that if the Trial Court had reference to Appellant's Nevada residence in concluding that he had practiced fraud on the Nevada Court, Appellant now urges that such a conclusion is not warranted by substantial evidence. It should be noted, parenthetically, that the evidence adduced at the Trial by the Appellee did not challenge the bona fide character of Appellant's Nevada residence. Under the doctrine of the first *Williams Case*, the Court is bound under such circumstances to accept the prima facie evidence contained in Appellant's divorce decree as determining the issue in the absence of any evidence challenging the residence.

In addition to this prima facie evidence, there remains uncontradicted the evidence of Appellant that he had established a Nevada residence for a business purpose and

with the intention of making his permanent residence in that state.

Appellant, in this connection, testified as follows:

A. I left Washington on the twenty-second of October, 1949.

Q. When did you first formulate plans to go there? When did you first decide to go? A. I had been thinking of it for about five or six months—of going there. My health had got bad. My job was not any too secure and home life was unpleasant. I thought that had a lot to do with my health. My blood pressure was running from 200 to 220 for over a year. I had two heart attacks. My job wasn't any too secure. I decided to go out West, where the climate was better, and try to go into a little business.

Q. You were thinking for five or six months of going out there. For what purpose were you going or thinking of going out? A. I was thinking of going in business.

Q. Was your purpose to get a divorce out there during those five or six months? A. No, not until about three months before I left.

Q. You stated your reasons for going to Nevada, or thinking of going, during the five or six months previous to your departure, were the conditions of your married life, your health, and the uncertainty of your job. Will you tell the Court very briefly what the state of your married life was that would cause you to want to change your place of abode from the District of Columbia to the State of Nevada or any other place?

A. Well, in regard to my married life, it was very disagreeable. My wife never spoke to me except in a sarcastic way. She tried to put the children against me. She was always condemning the children herself.

Q. Did she ever say anything about the children? A. Quite often. She did go so far one time as to say she would be glad to see the oldest child rolling in the fires of hell. Such as that upset me and got me in a terrible condition.

Q. Do I understand that that was one of the reasons for your leaving the District? A. Well, that was one of the reasons, yes.

Q. Why did you select Nevada? Why didn't you go to Alaska or Florida? A. Well, from what I had read and talked to people in the West, I liked the western climate. Several people had told me that Reno was a small city, yet was big in proportion, so far as finance, work, business, and things of that kind are concerned.

Q. What kind of business? A. I was going into a little, small construction business—sanding floors. I figured later maybe I would add a little real estate and insurance. I had experience in insurance.

Q. How was your health related to your leaving the District? A. Well, I had had two heart attacks. As I just said, my blood pressure for—well, for years it had been running away above normal. For a year it had been going from 200 to 220 all the time.

Q. Were you ever given any advice on what the cause of this high blood pressure and illness was? A. Well, they said it was something mental, either my job or my health. I don't think my job was affecting me that much.

Q. Your third reason was uncertainty of job. How was the uncertainty of your job related to your leaving the District? A. Well, at that time, if you all remember, in 1949, there was thousands laid off then. Even people that had twenty-five or thirty years service in the Government had been laid off and reduced down. I wasn't a veteran. I figured they would get me sooner or later.

Q. Your job is where? A. Naval Gun Factory.

Q. How long have you been there? A. Been in the Naval Gun Factory about twelve and a half years.

Q. Then, you finally said, you made up your mind to go to Nevada? A. That is right.

Q. At the time you went, what was your purpose in going to Nevada? A. My purpose was to find a place where I could go into a little, small business, that I thought I could make a living at.

Q. You had some papers that had something to do with divorce before you left for Nevada, hadn't you? A. That is right.

Q. Why did you get those signed before you went, if you went there for the benefit of your health and for business? A. I figured I wasn't going to be in the

District any more. I didn't expect at that time to live in the District anymore; I was expecting to make that my home.

Q. When you left and went out there, did you go out there with the thought of never coming back? A. I was expecting to come back here and straighten my business up, yes.

Q. How long did you expect to stay out there before you would make up your mind? A. I wasn't sure at the time I left as to how long I would be gone on that first trip.

Q. What was the object of your going out there and coming back? Why did you want to go out at all? A. It wasn't necessary for me to resign my job before I left here, because I had four months leave coming to me. They had granted my leave; it wasn't necessary. I had never been there; I wasn't positive I would like it.

Q. You went out there, and you stated you did not go out there to stay, but were coming back to straighten up your affairs. What was the purpose of going out there and then coming back to straighten up your affairs? Why didn't you straighten up your affairs before you went out? A. Well, I had things here—material or furniture—different things. I didn't want to go out like a gypsy and carry everything I had all over the country. I wasn't certain I was going to live there.

Q. You didn't know for certain you were going to stay there? A. I didn't know for certain. It was my intentions—full intentions—but I didn't know I was going to stay there.

Q. Was your intention to stay dependent on what you found when you got out there? A. That is right.

Q. Mr. Hobbs, when you got out there, what did you find, as far as business was concerned? A. I found it very promising.

Q. Why didn't you stay there? A. Well, I came back here to straighten out my business. When I got back here, the woman that I am married to now—she refused to go out there and live because her father was sick and her mother had to go to the hospital. We stayed here temporarily and the job situation had improved. Lay-offs had stopped. We figured on staying here for a while until—

Q. What do you mean by "for a while"? A. To whatever time her mother's and father's health got better.

Q. What is your present disposition, since you have stayed here quite a while? A. This thing came up. I had to stay here to defend this divorce. It is still my intention to go there now when I retire. I am eligible for retirement in about a year.

Q. Had you discussed with your wife the possibility of going back? A. That is right.

Q. Is it still your intention to go to Nevada, and live there? A. Yes, it certainly is.

Q. Are conditions conducive to making it your future home? A. It is. (R. 48, 49, 50, 51, 52, 53, 54)

VII.

CONCLUSION AND REQUEST FOR RELIEF.

The Judgment of the Court below should be reversed with instructions to dismiss the Complaint.

Respectfully submitted,

RAYMOND GODBERSEN
Suite 420, Kass Building
711 Fourteenth Street, N.W.
Washington, D. C.
Attorney for Appellant.

Dated: September 18, 1951.
Washington, D. C.

APPENDIX

IN THE
United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 11,093

JAMES T. HOBBS, *Appellant*,

v.

BEULAH E. HOBBS, *Appellee*.

Appeal From the United States District Court
for the District of Columbia.

APPENDIX TO BRIEF FOR APPELLANT.

81

Filed February 6, 1950

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA.

Civil Action No. 582-50

BEULAH E. HOBBS, 5041 1st Street, N.W., Washington, D. C.
Plaintiff,

v.

JAMES T. HOBBS, 212 Oakwood Street, S.E., Emp. Shop 11,
Naval Gun Factory, Washington, D. C., *Defendant.***Complaint for Maintenance and Support.**

The complaint of Beulah E. Hobbs, respectfully represents to the Court as follows:

1. That she is an adult citizen of the United States and a resident of the District of Columbia, having resided here for more than 18 years prior to filing this action.
2. That the defendant is likewise an adult citizen of the United States and a resident of the District of Columbia.
3. That the parties were lawfully married to each other at Danville, Virginia, on December 18, 1912.
4. That following their marriage they lived and cohabited together in the District of Columbia and elsewhere until October 17, 1949.
5. That three children were born of the union, all of whom are adults.
6. That on or about the 17th day of October, 1949, after a period of almost three months of constant brow-beating, threats and promises of every character on the part of the defendant, toward the plaintiff, which conduct put her in fear, caused her to lose sleep and appetite, thereby seriously impairing her health, she signed a paper writing, whose import she vaguely understood, if at all, she not being versed in legal matters and not having the benefit of counsel. One of the inducements offered by the defend-

ant for the signing of the aforesaid paper writing was his
promise to support the plaintiff during her natural
82 life. Plaintiff is informed that the paper writing
referred to above was a Waiver and Appearance
in a Nevada divorce suit. Defendant now repudiates his
agreement to support plaintiff because he says he was
compelled to promise to support plaintiff in order to get
the signed Waiver and Appearance, as is shown by a copy
of a letter attached hereto, marked Plaintiff's Exhibit A,
which letter was sent on behalf of defendant.

7. That the defendant, plaintiff is informed, flew to Reno, Nevada, simulated a residence there for the required 6 weeks, obtained a divorce, using as evidence in said action, the Waiver and Appearance, which he had procured from the plaintiff by his fraud, coercion and undue influence, immediately flying back to the District of Columbia, and within a few days entered into a marriage ceremony with a woman called Marie Timcoe, in the District of Columbia, with whom he is presently living at 212 Oakwood Street.

8. During the entire 37 years of the married life of the parties, plaintiff has always conducted herself properly, maintained a proper home for defendant and raised their family of three children. She has never been employed and at her present age she is unable to support herself. Defendant is employed as a supervisor at the Washington Navy Yard and is in receipt of a gross income in excess of \$6,000.00 per annum.

WHEREFORE, the premises considered, plaintiff demands:

1. That process issue out of this Honorable Court directed to the defendant, commanding him to appear herein on a day certain and answer the exigencies of this complaint.

2. That pending the outcome of this cause, plaintiff be awarded a suitable sum as separate maintenance pendente lite for herself and upon a final hearing said order be made permanent.

3. That she be awarded pendente lite a proper amount as suit money and counsel fees.

83 4. And for such other and further relief as the nature of the case may require and to the Court may seem just and proper.

BEULAH E. HOBBS.

GEORGE A. HOSPIDOR,
1416 F Street, N.W.
Washington, D. C.
Attorney for plaintiff.

DISTRICT OF COLUMBIA, ss:

Beulah E. Hobbs, being first duly sworn, on oath deposes and says that she has read the foregoing complaint by her subscribed and knows the contents thereof and that the matters and things stated therein are true to the best of her knowledge, information and belief.

BEULAH E. HOBBS.

Subscribed and sworn to before me this 4th day of February, 1950.

GRACE E. M. GANSE,
Notary Public, D. C.

* * * * *

Filed March 3, 1950.

85

Motion to Dismiss.

Comes now the Defendant, by and through his Attorney of Record, and moves the Court to dismiss the Complaint filed herein and for reasons therefore states:

1. The Complaint does not state a cause of action for which the Court can award Judgment for the relief prayed.
2. This Court is without jurisdiction to try the issues raised in the Complaint.
3. The memorandum of points and authorities annexed.
4. The Affidavits annexed.

5. And for such further reasons as may be advanced at the hearing.

RAYMOND GODBERSEN

Attorney for Defendant

651 Pennsylvania Avenue S.E.

Washington, D. C.

FRanklin 0022.

* * * * *

Filed March 3, 1950.

86 **Affidavit in Support of Motion to Dismiss.**

CITY OF WASHINGTON

DISTRICT OF COLUMBIA, SS.

James T. Hobbs, being first duly sworn on oath, deposes and says:

That he is the Defendant in the above-entitled cause; that Plaintiff and Defendant were duly united in marriage December 18, 1912; that they cohabited as man and wife until approximately ten years preceding October 16, 1949; that on October 16, 1949, having been unable to live happily as man and wife, Plaintiff and Defendant agreed that their marriage should be dissolved; that the parties further agreed that they would divide their property equally and that after the marriage dissolution, Defendant would contribute such amounts as he was able, to Plaintiff's support, but that no set amount was agreed upon; that on October 16, 1949, before Warren Wood and Robert Waters and a Notary Public, Mr. O. H. Basseches, a Waiver and Appearance was signed by the Plaintiff to be used by the Defendant in a divorce action to be instituted in Nevada; the Waiver and Appearance was read to the Plaintiff by the Notary Public and he asked whether she fully understood what she was signing and the significance of the document; that the Plaintiff signified that she fully understood that which she was signing; that on December 5,

1949, the Second Judicial District Court of the State of Nevada awarded Defendant, James T. Hobbs, an absolute divorce from the Plaintiff.

JAMES T. HOBBS

Subscribed and sworn to before me this 15th day of February, 1950.

THEODORE SAKS

Notary Public, D. C.

* * * * *

Entered April 17, 1950.

91 Order Denying Motion to Dismiss.

This cause came on to be heard upon defendant's Motion to Dismiss the Complaint for Maintenance and the Plaintiff's answer thereto and upon consideration thereof and the oral argument thereon, it is by the Court this 17th day of April, 1950,

ORDERED, that the said motion be and the same is hereby denied.

EDWARD M. CURRAN.

* * * * *

Filed April 19, 1950.

92 Answer to Complaint for Maintenance and Support

Comes now the Defendant, by and through his Attorney of Record, and for Answer to the Complaint filed herein states as follows:

1. Defendant admits the allegations contained in Paragraph One.

2. Defendant admits the allegations contained in Paragraph Two.

3. Defendant admits the allegations contained in Paragraph Three.

4. Defendant admits the allegations contained in Paragraph Four.

5. Defendant admits the allegations contained in Paragraph Five.

6. Defendant denies the allegations contained in Paragraph Six.

7. Defendant denies the allegations contained in Paragraph Seven.

8. Defendant neither admits nor denies the allegations contained in Paragraph Eight, but demands strict proof thereof.

9. Defendant further alleges that on or about October 17, 1949, after Plaintiff and Defendant had, mutually and voluntarily, ceased to cohabit as man and wife for an uninterrupted period of approximately ten years, Defendant instituted divorce proceedings in the Second Judicial District Court of the State of Nevada. Plaintiff participated in these proceedings by signing a Waiver and Appearance to be filed in the said Court. The said participation was done of her own free will and with full knowledge of all the circumstances and the probable and intended consequences of her act. Forthwith, and on December 5, 1949, the said Nevada Court awarded the Defendant herein, James T. Hobbs, an absolute divorce from the Plaintiff.

10. Defendant further alleges that prior to the institution of the Nevada proceedings, Plaintiff and Defendant entered into a property settlement whereby the parties divided their liquid cash reserves, the Plaintiff received the household furniture, and the Defendant agreed to contribute to the Plaintiff such amounts as he could afford to for her maintenance and support.

JAMES T. HOBBS, *Defendant.*

RAYMOND GODBERSEN

Attorney for Defendant

651 Pennsylvania Avenue, S.E.

Washington, D. C.

FR. 0022.

CITY OF WASHINGTON
DISTRICT OF COLUMBIA, SS.

James T. Hobbs, being first duly sworn, deposes and says that he has read the foregoing Answer to Complaint for Maintenance and Support, by him subscribed, and knows the contents thereof and that the matters and things stated therein are true to the best of his knowledge, information and belief.

JAMES T. HOBBS, *Defendant*.

Subscribed and sworn to before me this 18th day of April, 1950.

(SEAL)

JACQUES P. DUVINTAGE
Notary Public, D. C.

Commission expires May 14, 1951.

* * * * *

Filed June 22, 1951.

95 **Defendant's Exhibit No. 1.**

No. 127717

Dept. No. 1

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF
NEVADA IN AND FOR THE COUNTY OF WASHOE

Thomas O. Craven
Attorney at Law
Attorneys for Plaintiff

Filed Dec. 5, 1949.

JAMES T. HOBBS, *Plaintiff*,
vs.
BEULAH E. HOBBS, *Defendant*.

Decree of Divorce.

BE IT REMEMBERED that this Cause came on regularly for trial, plaintiff appearing personally and by and through

his attorney, Thomas O. Craven, Attorney at Law, and the defendant duly entered her appearance by an Appearance and Waiver executed by her, whereby she consented to the setting of the cause for immediate trial, and whereby she waived notice of all further proceedings; and the Court having heard the proof offered and made at the trial on behalf of the plaintiff in support of said Complaint, and the testimony of the witnesses sworn and examined upon said trial, and having considered the same together with the papers and records in said cause, and said cause having been regularly submitted to the Court for decision and the Court having been fully advised in the premises, and having filed its Findings of Fact and Conclusions of Law;

Now, THEREFORE, it is hereby ORDERED, ADJUDGED AND DECREED as follows:

1. That plaintiff be, and he hereby is, granted a
96 decree of divorce from defendant upon the ground of extreme cruelty, entirely mental in character, same being final and absolute in force, form and effect, the laws of the State of Nevada providing no interlocutory period nor conditions or restrictions on remarriage; and that the bonds of matrimony now and heretofore existing between plaintiff and defendant are fully, completely and forever dissolved and that plaintiff and defendant are both and each hereby restored to the status of single persons.

2. That the written Agreement of the parties, made and entered into under date of October 17, 1949, a copy of which is in evidence in this cause as "Plaintiff's Exhibit 'A' ", be, and the same hereby is, ratified, confirmed, approved and adopted by this Court, and made a part of this Decree, as if the same were herein set out in haec verba; that as to all matters concerning and relating to the property rights of plaintiff and defendant, said plaintiff and defendant are hereby ordered and directed to comply

with the terms of said Agreement and to perform the obligations thereof.

Done in open Court this 5th day of December, 1949.

WM. McKNIGHT, *District Judge.*

* * * * *

97 **Defendant's Exhibit No. 2.**

THIS AGREEMENT made and executed in duplicate this 17th day of October, 1949, by and between James T. Hobbs, hereinafter called the husband, and Beulah E. Hobbs, hereinafter called the wife, witnesseth:

WHEREAS, divers disputes and unhappy differences have arisen between the said parties hereto, for which reason, they have consented and agreed, and hereby do consent and agree, to live separate and apart from each other during their natural lives; and WHEREAS, the said parties hereto desire to enter into articles of separation and of making arrangements in connection therewith, all as hereinafter set forth: NOW THEREFORE IT IS MUTUALLE AGREED BY THE PARTIES HERETO AS FOLLOWS:

1. That from and after the date hereof, it shall be lawful for the parties hereto, at all times, to live, and to continue to live, separate and apart from each other; that neither party shall at any time, sue the other, or suffer the other to be sued, in any action, for so living separate and apart; that neither party shall compel, nor attempt to compel, the other to live with him or her; that neither party shall, in any manner or form whatsoever molest or trouble the other.

2. That each party hereby waives and releases to the other party any and all claims that he or she may or might have, or claim to have, against the other, by reason of any matter, cause or thing whatsoever, down to the day of the date of this agreement, except as herein otherwise expressly provided.

3. That in case of any action for divorce being brought by either of said parties against the other, neither of said

parties will claim or demand from the other any costs, counsel fees or alimony or any other property, claim or demand of any kind whatsoever, except as herein otherwise expressly provided.

4. That the wife covenants that she will not, at any time, contract and debt, charge or liability whatsoever, for which the husband, his legal representatives, heirs or
98 assigns, or his or their property or estate, shall or may become, or be liable; and the wife covenants at all times, to keep the said husband, his legal representatives, heirs and assigns, free harmless and indemnified of and from any and all debts, charges and liabilities heretofore or hereafter contracted or incurred by the wife.

5. That the husband herewith agrees with the wife to divide the furniture and other personal articles belonging to them on a basis mutually agreeable to each of them; and the husband herewith expressly agrees to pay the said wife, during the course of her natural life the sum of Eighty (\$80.00) Dollars per month, payable to the wife at the rate of Forty (\$40.00 Dollars) on the 1st and 15th of each month after date. It is agreed by the wife however that if the husband's income is reduced below its present level that the payments of \$80.00 per month shall be reduced accordingly. In other words if the husband's salary is reduced 10% then the monthly payments would be reduced by \$8.00. This condition with respect to reduction shall also hold good in the event the husband retires from his present position.

6. That the wife hereby waives any dower right that she might have in her husband's property.

7. That each party shall and will, at any time or times, make, execute and deliver any and all such further assurances and will perform all such acts as the other of said parties shall reasonably require, for giving full force and effect to this agreement, and to covenants, conditions and provisions thereof.

8. This agreement shall remain in full force and effect, and in the event that either party breaches the covenants or conditions herein contained, then and in that event, either party may be, and it is agreed is, restored to any and all rights, which she or he may have in law and equity.

As witness our hands and seal this 17th day of October, 1949.

JAMES T. HOBBS
BEULAH E. HOBBS

Witnessed by:

HUGH W. MYERS

(as to both)

5041 1st St., N.W.

* * * * *

88

Defendant's Exhibit No. 3.

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF
NEVADA, IN AND FOR THE COUNTY OF WASHOE

No. 127717

JAMES T. HOBBS, *Plaintiff*,

vs.

BEULAH E. HOBBS, *Defendant*.

APPEARANCE AND WAIVER.

The undersigned, named as defendant in the above entitled action, hereby consents that when a complaint is filed by the above named plaintiff seeking an absolute divorce from the undersigned in the above named Court, this instrument will constitute an appearance in that action by the undersigned, and that the undersigned does hereby submit herself to the jurisdiction of the Second Judicial District Court of the State of Nevada, in and for the County of Washoe.

Said defendant hereby waives all time to demur, answer or otherwise plead in any such action and consents that

her default may be entered and said cause may be set down for trial at the convenience of the Court, and hereby waives notice of setting and expressly waives any and all statutory time provided for the filing of Findings of Fact and Conclusions of Law and the Decree, and further waives service of all notices and process required by law in the premises.

BEULAH E. HOBBS.

WARREN W. WOOD
ROBERT L. WATERS

* * * * *

Filed May 25, 1951

* * * * *

99

Findings of Fact.

Upon consideration of the pleadings filed herein, the testimony and evidence adduced in open court upon the final hearing of this cause, and of the arguments of counsel, the Court, this 24th day of May, 1951, makes the following:

FINDINGS OF FACT.

1. The plaintiff, Beulah E. Hobbs, and the defendant, James T. Hobbs, were lawfully married in Danville, Virginia, on December 18, 1912, and lived together approximately 37 years until defendant declared his intention to get a divorce and departed for Nevada for that purpose.

2. Three children were born of the marriage, all of whom are adults.

3. The defendant, James T. Hobbs, obtained leave from his employment in the District of Columbia, purchased a round trip ticket to Reno, Nevada, arriving there October 23, 1949 with the intention of getting a divorce from his wife.

4. Forty-three days after his arrival in Reno, Nevada, or on December 5, 1949, the defendant obtained a divorce decree in the Second Judicial District Court of the State of

Nevada, and on the same day returned by plane to the District of Columbia where he has since remained.

5. Previous to leaving for Nevada the defendant obtained from his wife by means of intimidation and coercion an appearance and waiver for use in his contemplated divorce action in Nevada.*

2 6. Beulah E. Hobbs, the plaintiff herein, was not served with process in the Nevada proceeding, did not participate therein, and made no appearance therein except that the defendant herein filed or caused to be filed therein the appearance and waiver he had obtained from plaintiff by means of intimidation and coercion as aforesaid previous to his departure for Nevada.

7. The implications of the aforementioned appearance and waiver were little understood or not comprehended by Beulah E. Hobbs.

8. The execution and delivery of the aforementioned appearance and waiver were not voluntary acts of Beulah E. Hobbs.

9. The plaintiff herein had no opportunity to contest in the Nevada action the issue of her husbands' domicile or any other issue relevant to the litigation.

10. About a week after his return from Nevada the defendant went through a marriage ceremony with another woman.

11. The defendant, James T. Hobbs, did not acquire a bona fide domicile in the State of Nevada.

12. The marriage of plaintiff and defendant remains undissolved.

13. The defendant husband now earns approximately \$6,000.00 per year.

14. The plaintiff is timid and retiring, has had no practice in or training for gainful employment, and is without property other than personal and household effects of trifling value. Because of her age and inexperience it is unlikely that she would be able to obtain paid work. She is dependent upon the defendant for maintenance.

15. The defendant has failed and refused to support plaintiff without just cause although able so to do.

3 16. Before defendant's departure for Nevada and while the parties were residing in their common home in the District of Columbia a separation agreement was signed by them providing for maintenance payments of \$80.00 per month to plaintiff by defendant. The said agreement was incorporated in the Nevada decree but this was unknown to plaintiff until the hearing of this cause. In the month following the Nevada decree the defendant stopped the maintenance payments, asserting the invalidity of the agreement as set forth in Exhibit A attached to the complaint herein. The agreement was the result of intercession by a son of the parties. The defendant (with or without an appearance and waiver by his wife) intended to cast her off in a divorce court in a foreign jurisdiction without making any provision binding upon him for her support. The plaintiff was in fear of her husband and he threatened the son but the son persisted and finally obtained the execution of the agreement by his parents, erroneously believing as did his mother that it provided the only means of her immediate subsistence.

* * * * *

Filed May 25, 1951

102

Conclusions of Law.

The Court having heretofore entered its Findings of Fact in this case, concludes, as a matter of law:

1. That the purported decree of divorce awarded James T. Hobbs, defendant herein, against Beulah M. Hobbs, plaintiff herein, by the Second Judicial District Court of the State of Nevada, dated December 5, 1949 was procured by fraud practiced on said Court by the same James T. Hobbs, and is null and void for want of jurisdiction, and is not entitled to full faith and credit in this Court.

2. That the appearance and waiver filed in the Nevada divorce action was obtained from Beulah E. Hobbs, through

intimidation and coercion, and was not the voluntary act of said Beulah E. Hobbs.

3. That plaintiff is entitled to final judgment for separate maintenance, counsel fees and costs.

BURNITA SHELTON MATTHEWS,
Judge.

* * * * *

Filed May 25, 1951

103 Final Judgment for Separate Maintenance.

Upon consideration of the Findings of Fact, and Conclusions of Law, entered in this cause, it is by the Court, this 25th day of May, 1951:

ORDERED, ADJUDGED, AND DECREED:

1. That the defendant, James T. Hobbs, pay to the plaintiff, Beulah E. Hobbs, as permanent maintenance for her support the sum of \$80.00 per month, in equal installments of \$40.00 on the 12th and 24th day of each and every month beginning on May 24th, 1951, until further order of this Court.

2. That the defendant, James T. Hobbs, pay to George A. Hospidor, Esquire, attorney of record for plaintiff herein, the sum of \$250.00 for his services as such attorney, said fee to be payable in three equal monthly installments within 90 days.

3. Plaintiff is allowed her costs in this action.

BURNITA SHELTON MATTHEWS,
Judge.

* * * * *

Filed June 12, 1951

104

Notice of Appeal.

Notice is hereby given this 12th day of June, 1951, that JAMES T. HOBBS, Defendant above-named, hereby appeals to the United States Court of Appeals for the District of Columbia from the judgment of this Court entered on the 25th day of May, 1951, in favor of Plaintiff, Beulah E. Hobbs, against said Defendant, James T. Hobbs.

RAYMOND GODBERSEN,
Attorney for Defendant,
Suite 420, Kass Building,
711 14th Street, N.W.,
Washington, D. C.,
DIstrict 6494.

* * * * *